REMARKS

Applicant thanks the Examiner for the remarks and analysis contained in the Office Action. Claim 1 has been amended to incorporate the limitations of claim 4. Claim 4 has been cancelled. Claim 8 has been amended to incorporate the limitations of claim 12. Claim 12 has been cancelled. Applicant respectfully requests reconsideration of this application.

The rejection under 35 U.S.C. §102(e) of claims 1, 2, 8 and 10 and the rejection under 35 U.S.C. §103 of claims 3, 6, 7, 11, 14 and 15 can be withdrawn in view of the amendments to claims 1 and 8.

Applicant respectfully submits that claims 1 and 8 are not obvious under 35 U.S.C. §103 based upon the proposed combination of *Lee*, APA and *Sindhushayana, et al.*, which was applied against claims 4 and 12. Applicant respectfully disagrees with the Examiner's position that *Sindhushayana, et al.* "remedies the deficiencies of *Lee* in view of the APA." The Examiner properly acknowledges that *Lee* and the APA "does not specifically disclose wherein the at least one permanent virtual pipe comprises a plurality of different width virtual pipes, at least one of the plurality of virtual pipes being wider than another of the virtual pipes, at least one burst segment of each data burst being scheduled for transmission on the widest virtual pipe." Applicant respectfully submits that the different data rates used in the *Sindhushayana, et al.* reference do not provide that, either, because the data rates do not constitute different width virtual pipes. At best, using the *Sindhushayana, et al.* technique would result in using different data rates at different times on the high speed forward channel of *Lee*. That is not the same thing as providing a permanent virtual pipe comprising a plurality of pipes of different widths.

Additionally, the *Sindhushayana, et al.* reference does not include having at least one burst segment of each data burst scheduled on a widest virtual pipe. Even if the data rates of the

5

Sindhushayana, et al. reference could be reasonably interpreted as different width virtual pipes, the *Sindhushayana, et al.* reference does not schedule at least one burst segment of each data burst at the highest data rate. Instead, the *Sindhushayana, et al.* reference uses a technique that chooses a data rate based upon a DRC message from a mobile station.

For example, paragraph [0047], beginning at line 8, teaches that a remote station determines channel conditions and transmits a DRC message that requests a "low data rate packet" if the channel conditions are not favorable. The base station of the *Sindhushayana, et al.* reference then transmits packets according to parameters stored in the scheduling unit, which will include a low data rate. That is not the same as always having at least one burst segment scheduled at the highest possible rate. Therefore, even if the different data rates of the *Sindhushayana, et al.* reference could reasonably be interpreted as different width virtual pipes (Applicant respectfully disagrees as such an interpretation is not reasonable), the *Sindhushayana, et al.* reference does not schedule at least one burst segment of each data burst at the highest data rate. Therefore, it is impossible to interpret the *Sindhushayana, et al.* reference as stated on page 5 of the Office Action where the Examiner contends that the reference teaches "at least one burst segment of each data burst being scheduled for transmission on the widest virtual pipe."

Paragraph [0049] of the *Sindhushayana, et al.* reference, beginning at line 17, teaches that the rate control algorithm provides a lower bound estimate for actual SINR during a next packet duration and determines a maximum data transmission rate that could be sustained based on the SINR lower bound estimate. Paragraph [0049] of the *Sindhushayana, et al.* reference also teaches using "a conservative measure of the data transmission rate at which the next packet can be received." In other words, the *Sindhushayana, et al.* reference does not always use the maximum data rate. It, therefore, cannot possibly always schedule at least one burst segment of a

6

data burst at the highest data rate. It follows that it is impossible to interpret the reference as teaching scheduling at least one burst segment of each data burst on a widest virtual pipe.

Even if the proposed combination of *Lee*, APA and *Sindhushayana, et al.* could be made, there is nothing within that combination that teaches the limitations in claims 1 and 8 concerning providing a plurality of permanent virtual pipes where at least one pipe is wider than others with at least one burst segment of each data burst scheduled for transmission on the widest of the virtual pipes. Because that is completely missing from the proposed combination, there is no *prima facie* case of obviousness and claims 1 and 8 are allowable.

Applicant believes that this case is in condition for allowance and requests a Notice of Allowance as soon as possible. If the Examiner believes that a telephone conference would be useful for moving this case forward to being issued, Applicant's representative will be happy to discuss any issues regarding this application and can be contacted at the telephone number indicated below.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By:

David J. Gaskey, Reg. No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: November 1, 2007

CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application Serial No. 10/717,065, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on November 1, 2007.

Theresa M. Palmateer

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